

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 7550

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**United States Court of Appeals for the
District of Columbia**

JANUARY TERM, 1940

565

WILLIAM F. ROBINSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

DAVID A. PINE,

United States Attorney,

WILLIAM S. TARVER,

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Attorneys for Appellee.

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In the United States Court of Appeals for the District of Columbia

JANUARY TERM, 1940

No. 7550

WILLIAM F. ROBINSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE ¹

The appellant was convicted in the District Court of the United States for the District of Columbia on an indictment in which he was charged with committing perjury in that he swore falsely in an application for a marriage license that his name was Afionzo P. Mattison and that he had no prior marriages.

Facts

The inadequacy of the statement of facts in appellant's brief requires the following summary of the evidence:

On April 13, 1933, a marriage ceremony was performed in Montgomery County, Maryland, by a duly authorized Minister of the Gospel between appellant, under the name of William Franklin Robinson and Dorothy Beatrice Marshall (R. 13, 14, 16).

Although the marriage contracted in 1933 had not been dissolved or annulled (R. 14, 15), appellant, on August 1, 1939,

¹ The bill of exceptions appears in an appendix to this brief.

applied at the District Court of the United States for the District of Columbia for a license to marry one Thelma Mooney. His answers to the questions of the Deputy Clerk of the Court were written on a printed form provided for the purpose and were under oath, as provided by Section 1291 of the Code of Law for the District of Columbia (Title 14, Sec. 9, 1929 Code). A copy of the application follows:

APPLICATION FOR MARRIAGE LICENSE

[Please print names]

I, *Afonso P. Mattison*, hereby apply for a license for the marriage of the following-named persons, the ceremony to be performed by Rev. *G. Ellington Stevenson*.

Full name of groom: *Afonso Preston Mattison*.

Age: *34*.

Colored.

Kinship between bride and groom: *None*.

Former marriages: *None*.

How terminated _____
(Death or divorce)

(One, two, etc.)

Legal residence: *Ruthford, North Carolina*.

(Street, city, and State)

1406 Swan St. N. W.

Full name of bride: *Thelma Mooney*.

Age: *31*.

Color: *colored*.

Former marriages: *None*.

How terminated _____
(Death or divorce)

(One, two, etc.)

Legal residence: *112 E. Bradley Lane, Ch Ch Md.*

(Street, city, and State)

(The matter in italics represents the statements made by the appellant) (R. 13, 14).

Pursuant to the making of the application reproduced above, a license was issued and, on August 8, 1939, a marriage ceremony was performed by Rev. Gregory E. Stevenson between appellant and Thelma Mooney (R. 15, 16).

Thereafter Mrs. Dorothy Robinson, who was the woman to whom appellant was married in Montgomery County on April 13, 1933, complained to the police in reference to her husband's marriage to Thelma Mooney. As a result of her complaint appellant was arrested by Police Officers Allan B. Baker and Albert B. Hitts. Appellant admitted to Officer Hitts that he was the man who obtained a marriage license under the name of Mattison, that he was married to Thelma Mooney, and that he swore in the application for said marriage license that he

had no prior marriages and that his name was Mattison. Appellant admitted to Officer Baker that he was married to Thelma Mooney on August 8, 1939, after applying for and obtaining a marriage license under the name of Mattison. He further admitted to Officer Baker that he stated in the marriage license application that he had had no prior marriages. The appellant told the officer that his real name was Robinson and that he had a prior wife who was living in Washington and from whom he was not divorced. In response to a question by Officer Baker as to whether the appellant knew he was telling an untruth when he stated in the marriage license application that he had no prior marriages, the appellant replied that he knew the statement he had made was not true. In an apparent attempt to justify his actions, the appellant told Officer Baker that Dorothy Robinson was not divorced from her former husband at the time the 1933 marriage ceremony was performed (R. 15, 16).

During Officer Baker's investigation of the case he learned from Mrs. Dorothy Robinson that she thought her former husband had divorced her before she married the appellant. She told the officer that she had not been served with any divorce papers by her former husband but that the appellant's mother had told her that her (Dorothy Robinson's) husband had divorced her in New York some years before she married Robinson (R. 16).

The foregoing facts were developed on direct and cross-examination of the Government's witnesses during presentation of the Government's case in chief.

At the close of the Government's case counsel for appellant moved for a directed verdict on the ground that the materiality of the allegedly false statements had not been established and that it was the duty of the Government to show that Dorothy Robinson had in fact been divorced from her prior husband. The motion was overruled and an exception noted (R. 16).

Appellant, testifying on his own behalf, said that he was married to Dorothy Robinson in Rockville, Maryland, in 1933, but later found out that she had not been divorced from her former husband, Edward Jefferson. He said he

discovered this fact when Dorothy's son, by her prior marriage, said, "I can have you both locked up, you know you were never divorced from my daddy." He said Dorothy later admitted to him that she had not been divorced from Edward Jefferson. He testified further that he frequently used the name, Mattison, and that his name appears in the 1938 city directory as Mattison (R. 16, 17).

On cross-examination the appellant admitted that he had been convicted of bigamy in Rhode Island and also had been convicted of violating the National Motor Vehicle Theft Act. He said he did not tell Thelma Mooney of his marriage to Dorothy. He admitted that he had been married some years ago in Rhode Island and that the woman to whom he was married there was dead. He said his real name was William Franklin Robinson (R. 17).

In rebuttal, the Government called Officer Baker who testified that the appellant had told him that he used the name Mattison in applying for a marriage license because he had been convicted of bigamy in Rhode Island under the name of Robinson and did not want that fact known (R. 17).

At the close of all the evidence the motion for directed verdict was renewed and was overruled (R. 17). The only objections preserved are to the overruling of both motions for directed verdict.

STATUTES

The following are the statutes involved in this appeal:

Act of March 3, 1901, 31 Stat. 392, c. 854, sec. 1291; Sec. 1291 Code of Law for the District of Columbia of 1901; Title 14, Sec. 9, Code of Law for the District of Columbia of 1929.

Duty of clerk.—It shall be the duty of the clerk of the supreme court before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts

shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury.

Act of March 3, 1901, 31 Stat. 1929, c. 854, sec. 858; Sec. 858, Code of Law for the District of Columbia of 1901; Title 6, Sec. 131, Code of Law for the District of Columbia of 1929.

Perjury; subornation of perjury.—Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section.

SUMMARY OF ARGUMENT

I

The false statements sworn to by appellant were in regard to facts required by statute to be stated, and hence were material; the statute specifically provides that the false statements made by appellant shall be deemed perjury.

II

Testimony presented by the Government in its case in chief established *prima facie* the appellant's guilt and required consideration by the jury.

III

Determination of whether appellant's marriage in 1933 was void was for the jury, but, assuming, *arguendo*, the marriage to have been void, there were other facts sufficient to sustain the judgment.

ARGUMENT

I

The false statements sworn to by appellant were in regard to facts required by statute to be stated, and hence were material; the statute specifically provides that the false statements made by appellant shall be deemed perjury

Appellant states in his brief that the only point involved in this appeal is whether the false statement concerning his prior marriage was material. He discards as of no importance the false statement as to his name. This arbitrary elimination of evidence will be discussed further under points II and III of this argument. In view of the specific provisions of Section 1291, Code of Law for the District of Columbia (1901 Code), the contention that the false statements are immaterial and hence cannot be the basis of perjury is clearly without substance. That section provides that the Clerk of the Court, before issuing a marriage license, must examine applicants under oath and ascertain their names, ages and color, and, if they are under age, the names of their parents or guardians, whether they were previously married, whether they are related or not, and, if so, in what degree. This constitutes a legislative determination that the sworn statement of an applicant for a marriage license as to any of the required information is material, since the giving under oath of the information specified by the statute is a prerequisite to the issuance of a marriage license. Even if the provisions of Section 1291 discussed above did not foreclose all question of the materiality of the statements made by the appellant, the additional provision of Section 1291 that "any false swearing in regard to such matters [the information required by the statute] shall be deemed perjury," would make appellant's false statements perjury without regard to their materiality.

In the absence of Section 1291, the false statements made by appellant would meet the test of perjury as it is contained in Section 858 of the Code of Law for the District of Columbia (1901 Code). That section, in brief, defines perjury as the willfully false swearing to any material statement which the person so swearing does not believe to be true. The obvious reason for the ascertainment by the Clerk of the Court of information as to an applicant's name, age, previous marriages, and so forth, is that the Clerk may learn both from the applicant's statements and from subsequent investigation, if such investigation is necessary, whether he or she is a proper person to be married. Because of this, the courts of various States have held false statements made concerning such matters to have been perjury.

In the cases of *State v. Randall*, 166 Minn. 381, 208 N. W. 14, and *People v. Torterice*, 66 Cal. App. 115, 225 Pac. 760, it was held that statements concerning the age of applicants for marriage licenses were material and properly the bases of perjury prosecutions.

In *Field v. State*, 29 Ohio Cir. Ct. R. 304, the Court considered the question of whether a statement concerning prior marriages was material and at page 305 said:

We also hold that the statement as to the number of times the applicant had been previously married is material.

The legislature having required the statement to be made, leaves no discretion in the probate judge as to submitting it, no matter what the answers to other questions might be.

Again, suppose the applicant should state that he had been married before. That would put the probate judge upon inquiry to ascertain whether such former wife was dead or divorced, and as to these further matters, there is no statute which authorizes the probate judge to rely upon the oath of the applicant, but the judge must still determine whether there is a legal impediment to the marriage. Suppose the applicant says, "I have been married, but am now divorced."

That he is now divorced is a legal conclusion and a careful probate judge would then answer:

"Bring in a certificate to that effect from the court which divorced you, and I will then issue a license to you."

Further, it is material that the probate judge be advised as to the number of times the applicant had been married previously, for otherwise he might evasively answer that he had been married before and been divorced, which might be true as to one previous marriage, but not as to another.

II

Testimony presented by the Government in its case in chief established prima facie the appellant's guilt and required consideration by the jury

Appellant says that the Court below should have directed a verdict of not guilty at the close of the Government's case. This contention is based upon the theory that appellant's answer to the question concerning prior marriages was legally true in that his marriage in 1933 was void and constituted no marriage at all. Appellant overlooks, however, the fact that the only evidence concerning appellant's contention that Dorothy Robinson had another husband living and not divorced were the statements by the two police officers that appellant had told them that Dorothy was not divorced from her prior husband. It was not until the appellant took the witness stand that it was directly stated that Dorothy had not been divorced from her prior husband, and, even then there was no corroboration. On the other hand, Dorothy Robinson had testified during the Government's case in chief that she was the wife of the appellant; evidence had been presented that a license had been issued for the marriage of Dorothy and the appellant and that the ceremony had been performed by a duly authorized Minister of the Gospel; Officer Baker had testified that Dorothy Robinson had told him that she had been informed that her former husband had obtained a divorce from her in New York some years before she married Robin-

son; and the appellant had told Officer Baker, at the time of his arrest, that he knew to be untrue the statement he had made that he had no prior marriage. Thus, it is evident that the jury reasonably could have concluded from the evidence before it at the close of the Government's case that Dorothy Robinson had been divorced from her first husband before she married the appellant and that appellant deliberately had sworn falsely when he said he had no prior marriages.

In the Government's case in chief, evidence also was given that appellant swore that his name was Aflonso P. Mattison although his real name was William Franklin Robinson. It was not developed until appellant took the stand that he frequently used the name of Mattison. Therefore, it will be seen that there was substantial evidence to go to the jury concerning both the false statement as to prior marriages and the false statement as to the name of the appellant and that the Court properly overruled the motion for a directed verdict.

III

Determination of whether appellant's marriage in 1933 was void was for the jury, but, assuming, arguendo, the marriage to have been void, there were other facts sufficient to sustain the judgment

Even though it had been conclusively proved that appellant's marriage in 1933 to Dorothy Robinson was void, his statement that he had had no prior marriages was false in the light of his own testimony under cross-examination that he had been legally married to a woman in Rhode Island who had died. The printed form of application which appellant completed left no doubt that the question concerning former marriages was intended to elicit information as to the number of such marriages and not whether the applicant was then married. Appellant's own testimony on this point, therefore, was sufficient to convict him. In addition, he admitted that he did not give his true name. This was sufficient to sustain a conviction even though appellant was frequently known by the name of Mattison, since the name required by the statute

is the applicant's legal name. The statement of appellant to Officer Baker that he used the name of Mattison because he had been convicted of bigamy in Rhode Island under the name of Robinson and did not want that fact known showed that the false statement in this regard was deliberately designed to conceal his identity and his past history.

Therefore, there were three factual situations deducible from the evidence which would have justified a verdict of guilty. These were: (1) The marriage of appellant in 1933 to Dorothy Robinson was a valid, subsisting marriage and because of it the statement of appellant that he had no prior marriages was false; (2) Appellant had been married in Rhode Island to a woman now dead, and, therefore, his statement that he had no prior marriages was false; and (3) He willfully swore that his name was Aflonso P. Mattison, whereas his true name was William Franklin Robinson. It was the duty of the trial court, then, to submit all the evidence to the jury and to overrule appellant's motion for directed verdict which was made at the conclusion of the entire case.

CONCLUSION

It is respectfully submitted that the judgment of the Court below should be affirmed.

DAVID A. PINE,
United States Attorney,
WILLIAM S. TARVER,
Assistant United States Attorney,
Attorneys for Appellee.

APPENDIX

Bill of Exceptions

Be it remembered that this cause came on for trial on October 30, 1939 before Justice Peyton Gordon in Criminal Court No. 1. The United States was represented by William S. Tarver, Esq. and the defendant was represented by James J. Laughlin, Esq.

Whereupon the jury was duly sworn to try the cause and an opening statement was made on behalf of the Government and no opening statement was made on behalf of the defendant.

The maintain the issues upon its part joined, the United States introduced the following evidence and the following proceedings were had:

By stipulation a certified copy of a marriage license issued at Rockville, Maryland, for the marriage of William Franklin Robinson and Dorothy Beatrice Marshall and of a return on said license showing the marriage of the said parties on April 13, 1933, in Montgomery County, Maryland, by a duly authorized minister of the gospel was introduced in evidence.

Maude R. Rynex was called as a witness on behalf of the United States and having been first duly sworn was examined and testified as follows:

That she is Deputy Clerk of the District Court of the United States for the District of Columbia and was so employed on August 1, 1939; witness produced records to show that on August 1, 1939 she issued marriage license to one Aflonzo P. Mattison. The application upon which the marriage license was issued is represented below (R. 13):

APPLICATION FOR MARRIAGE LICENSE

[Please print names]

I, Afonso P. Mattison, hereby apply for a license for the marriage of the following named persons, the ceremony to be performed by Rev. *G. Ellington Stevenson*.

Full name of groom: *Afonso Preston Mattison*.

Age: *34*.

Colored.

Kinship between bride and groom: *None*.

Former marriages: *None*.

(One, two, etc.)

How terminated_____

(Death or divorce)

Legal residence; *Ruthford, North Calinia*.

(Street, city, and State)

1406 Swan St., N.W.

Full name of bride: *Thelma Mooney*.

Age: *31*.

Color: *Colored*.

Former marriages: *None*.

(One, two, etc.)

How terminated_____

(Death or divorce)

Legal residence: *112 E. Bradley Lane, Ch. Ch., Md.*

(Street, city, and State)

The matter in italic was filled in by the applicant.

The witness Rynex testified further that the person who secured the marriage license answered the questions contained in said printed application under oath and that the witness was a person authorized by law to administer oaths.

Thereupon Dorothy B. Robinson was called as a witness on behalf of the United States and, having been first duly sworn, testified in substance as follows:

That she is the wife of the defendant. Whereupon the following occurred:

Mr. TARVER. It is my duty to advise you of your constitutional rights. You do not have to testify against your husband if you do not care to.

WITNESS. I do not care to testify.

Whereupon the witness was excused (R. 14).

Thereupon Rev. Gregory Stevenson was called as a witness for the Government and after being sworn testified as follows:

That he performed marriage ceremony between defendant and Thelma Mooney on August 8th, 1939.

Thereupon Albert B. Hitts was called as a witness for the Government and after being sworn testified as follows:

That he is a member of the Metropolitan Police Department and arrested defendant for the offense of perjury; wit-

ness said that defendant admitted that he obtained the marriage license on August 1, 1939, and did marry Thelma Mooney; that he swore in said application that he had no prior marriage, and that his name was Mattison.

Upon cross-examination witness said defendant told him that he had used the name of Mattison and that he thought that his wife Dorothy had never been divorced from her husband.

Thereupon Allan B. Baker was called as a witness for the Government and after being sworn testified as follows:

That he is a member of the Metropolitan Police Department and is assigned to the District Attorney's Office; that he was assigned to the case when Dorothy Robinson made complaint and that he participated in the arrest of defendant; witness testified that the defendant admitted to him that he was married to Thelma Mooney August 8, 1939, after applying for and obtaining a marriage license under the name of Mattison. The witness said the defendant further admitted that he stated on the marriage license application that he had had no prior marriages. The witness said the defendant told him that his real name was Robinson and that the defendant admitted he had a prior wife who was living in Washington and from whom he was not divorced. The witness said he asked the defendant if the defendant did not know at the time he stated on the marriage license application that he had no prior marriages that the statement was not true. The witness said the defendant replied that he knew the statement he had made was not true (R. 15).

Upon cross examination the witness said that the defendant told him that his wife was not divorced from her prior husband. Asked whether he had discussed Dorothy Robinson's prior marriage with her, the witness said he had and that she told him she thought her husband had divorced her before she married the defendant. The witness testified further that Dorothy Robinson told him she had not been served with any divorce papers, but that the defendant's mother had told her that her (Dorothy Robinson's) husband had divorced her in New York some years before she married Robinson.

Whereupon the Government rested and counsel conferred at the bench in a low tone as follows:

Mr. LAUGHLIN. Your Honor, I now move for a directed verdict on the ground that the materiality of the statements has not been established. It is the duty of the Government to show that Dorothy Robinson had in fact been divorced from her husband. I think it is a question of law for the court.

The COURT. Your motion is overruled. The statements are material and are made so by law and I will tell the jury so.

Mr. LAUGHLIN. I note an exception.

Whereupon Thelma Mooney was duly sworn as a witness for the defendant and testified as follows:

She was married to defendant in August 1939 and did not know of defendant's marriage to Dorothy Robinson.

Whereupon defendant William F. Robinson was duly sworn and testified in his own behalf as follows:

He was married to Dorothy Robinson in Rockville in 1933 but later found out that she had not been divorced from her husband Edward Jefferson; witness said he found this out when Dorothy's son by a prior marriage said "I can have you both locked up, you know you were never divorced from my daddy"; witness said that Dorothy Robinson later admitted that she had not been divorced from Edward Jefferson; witness said that he has used the name of Mattison frequently; that his name appears as Mattison in the 1938 City Directory; that he used the name (R. 16) Mattison in renting from the Washington Gas Light Co. and the Potomac Electric Power Company.

Whereupon after being cross examined witness said that he was convicted of bigamy in Rhode Island and also was convicted of violating the Dyer Motor Theft Act; witness said he did not tell Thelma of his marriage to Dorothy Robinson; the witness said he had married some years ago in Rhode Island and that the woman he married there was dead. He was asked what his real name was and he said "William Franklin Robinson." He then was asked why he used the name "Mat-

tison" in applying for a marriage license and he said it was because he went by that name. He was asked whether he had not told Officer Baker at the time the police arrested him that he used the name Mattison in applying for a marriage license because he had been convicted of bigamy in Rhode Island under the name of Robinson and did not want that fact known. He denied that this was true.

Whereupon the defense rested.

The witness Baker who had previously testified was recalled to the stand as a rebuttal witness and testified that the defendant told him that he used the name Mattison in applying for a marriage license because he had been convicted of bigamy in Rhode Island under the name of Robinson and did not want that fact known.

Whereupon the government rested.

A motion for directed verdict was made and overruled and exception noted.

The foregoing is the substance of all the testimony bearing upon the exceptions herein reserved on behalf of the defendant.

The attorneys for the parties desiring certain parts of the testimony reduced to the exact words of the witnesses, and desiring other portions of the record reduced to the exact language, and the Court approving, the same is allowed.

Thereupon, as all of the said exceptions were duly entered upon the minutes of the Court, before the jury retired to consider (R. 17) of its verdict and because the matters and things herein recited are not matters of record, in order to make the same a part of the record herein, which is hereby ordered, so that each defendant may have his case reviewed on appeal, the defendant herein by his attorney, move the Court to sign and seal, this his bill of exceptions to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed, which motion is granted by the Court; and thereupon the defendant tenders this, his bill of exceptions and requests the Court to sign and seal the same, which is accordingly done, nunc pro tunc, this 16th day of January, 1940.

(Sgd.) PEYTON GORDON (R. 18),
Justice.